

JOINDER AND SEVERANCE — Severance of codefendants' trials when defenses are antagonistic — Revised 11/2009

The Arizona Supreme Court has explained that severance is necessary when "the cores of the defenses of the two defendants [are] antagonistic to each other." *State v. Pearson*, 140 Ariz. 95, 97, 680 P.2d 805, 807 (1984). The Court explained the concept of "antagonistic defenses" in detail in *State v. Cruz*, 137 Ariz. 541, 544, 672 P.2d 470, 473-74 (1983):

It is natural that defendants accused of the same crime and tried together will attempt to escape conviction by pointing the finger at each other. Whenever this occurs the co-defendants are, to some extent, forced to defend against their co-defendant as well as the government. This situation results in the sort of compelling prejudice requiring reversal, however, only when the competing defenses are so antagonistic at their cores that both cannot be believed. Consequently, we hold that a defendant seeking severance based on antagonistic defenses must demonstrate that his or her defense is so antagonistic to the co-defendants that the defenses are mutually exclusive. Moreover, defenses are mutually exclusive within the meaning of this rule if the jury, in order to believe the core of the evidence offered on behalf of one defendant, must disbelieve the core of the evidence offered on behalf of the co-defendant.

In *State v. Rigsby*, 160 Ariz. 178, 181, 772 P.2d 1, 3 (1989), Rigsby claimed that he committed the offense out of fear of his codefendant Tucker; Tucker, however, claimed an alibi. These defenses were sufficiently antagonistic to require severance.

Defenses are not "antagonistic" to the extent that severance is required merely because they are inconsistent. *State v. Lawson*, 144 Ariz. 547, 557, 698 P.2d 1266, 1276 (1985). In *State v. Robles*, 182 Ariz. 268, 272, 895 P.2d 1031, 1035 (App. 1995), a case involving a transfer of drugs and an offer to sell drugs, one codefendant claimed he was entrapped into committing the offense, while the others claimed mere presence and innocence. The Court of Appeals held that these defenses were not so antagonistic

as to be mutually exclusive. The Court also noted that the jurors were instructed that they should give separate consideration to each defendant based on his own conduct, reducing the risk of any evidence against one defendant "rubbing off" on another. And in *State v. Lopez*, 173 Ariz. 552, 557, 845 P.2d 478, 483 (App. 1992), three defendants were all charged with the same offenses that arose out of the same incident. All three defendants had different defenses -- good character, entrapment, and lack of criminal intent -- but they were not inconsistent and the codefendants were properly tried together. Finally, in *State v. Turner*, 141 Ariz. 470, 687 P.2d 1225 (1985), Turner and McNair were charged with beating and robbing a victim. Turner claimed that he was not at the scene of the crime and was misidentified; McNair claimed that he did not know that the crime had been committed and that he lacked any criminal intent. "These defenses are not mutually exclusive because it would have been possible for a jury to believe both of the defendants." *Id.* at 472, 687 P.2d at 1227. The question of mutual exclusivity of defenses is determined at the time of the motion to sever, regardless of what defenses may arise during trial. *Id.*